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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,773	08/17/2006	Michael Mueller	C 2818 PCT/US 1	3875

23657 7590 08/06/2009
FOX ROTHSCHILD LLP
2000 MARKET STREET
PHILADELPHIA, PA 19103

EXAMINER

CHUI, MEI PING

ART UNIT	PAPER NUMBER
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1616

NOTIFICATION DATE	DELIVERY MODE
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08/06/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/589,773

Applicant(s)

MUELLER ET AL.

Examiner

MEI-PING CHUI

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616

8/03/09

Continuation of Box 11:

The request for reconsideration filed on 07/16/2009 has been fully considered but does NOT place the application in condition for allowance:

Applicants stated on record that the prior art, namely Milstein et al., do not teach or suggest a nanoemulsion, which has a specific mean particle size, as instantly claimed. Applicants also argue that Milstein et al. fail to teach the amount of oil component as claimed (see Remarks: page 5 filed on 07/16/2009). In addition, Applicants argue that the prior art, namely Simonnet et al. fail to teach the alkyl/alkenyl oligoglycoside carboxylate salts and prior art, namely Weuthen et al., fail to teach a nanoemulsion and the alkyl/alkenyl oligoglycoside carboxylate salts, as required by instant emulsion (Remarks: page 6).

The arguments are not persuasive because the prior art in combination teach and suggest all the claimed subject matters and claimed limitations (see Office Action, dated on 04/16/2009). As stated in the previous Office Action of record, the primary prior art, namely Milstein et al. teach a composition comprising the alkyl polyglycoside ether carboxylate, oil component, surfactants, monoalcohol and polyhydric alcohols, i.e. ethanol, glycerol, ethylene glycol and propylene glycol, as instantly claimed (Office Action, dated on 04/16/2009, Pages 7-8). Milstein et al. also suggest the range of their amount can be used in the composition.

The goal of secondary prior art, namely Simonnet et al., provides the teaching of an emulsion having average particle size of less than 100 nm and its beneficial effects that would motivate one of ordinary skill in the art uses for skin purposes (Office Action, dated on 04/16/2009, Page 9).

The goal of secondary prior art, namely Weuthen et al., is to teach that utilization of cosmetic compositions in wet wipe application is known. Weuthen et al. even suggest that the concentrate form of composition can be further diluted before it is impregnated with wet wipes (Office Action, dated on 04/16/2009, Page 14).

Therefore, from the teaching of the prior art in combination, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made because the combined teaching of the prior art fairly suggests the instant claims.

In summary, the scope of the instant claims are not altered and thus, it is the examiner's position that the prior rejections of record (mailed on 04/16/2009) remains valid and will be maintained for the reason of record.